

## **Indiana Department of State Revenue**

### **Ruling #1999-10ST**

November 9, 1999

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### **ISSUE**

Sales/Use Tax – Proficiency Testing Program

Authority: IC 6-2.5-3-1, IC 6-2.5-2-1, IC 6-2.5-3-2, IC 6-2.5-1-1, IC 6-2.5-1-2, IC 6-2.5-4-1, Rule 45 IAC 2.2-4-2

The taxpayer requests the Department to rule on the application of sales tax to a proficiency testing program.

### **STATEMENT OF FACTS**

The taxpayer is a membership organization exempt from payment of federal income tax under section 501(c)(6) of the Internal Revenue Code of 1986, as amended (the "Code"). The taxpayer is a not-for-profit corporation formed under the laws of Illinois and is headquartered in Illinois. It also has an office in Washington, D.C. The taxpayer has no office or other facility in Indiana.

The Department has previously determined that the taxpayer is "A retail merchant engaged in business in Indiana" (IC 6-2.5-3-1(c)), hence, the taxpayer is required to collect sales tax (IC 6-2.5-2-1) or pay use tax (IC 6-2.5-3-2) on all taxable transactions in Indiana. This ruling addresses the taxability of the proficiency testing program.

The proficiency testing program consists of the testing of pathology laboratories to determine whether the laboratories meet certain standards required by federal law and by the taxpayer. Under the Clinical Laboratory Improvement Amendments of 1988, 42 U.S.C. Section 263a, every pathology laboratory in the United States must be accredited periodically by the Department of Health and Human Services ("HHS") or another organization recognized by HHS as having standards that are equivalent to or more stringent than federal accreditation standards. ID at Section 263a(e). The only entities

that HHS has recognized for these purposes are the taxpayer, other not-for-profit organizations, and agencies of a few state governments.

In order to obtain accreditation, a laboratory must, inter alia, participate in a proficiency testing program. A proficiency testing program evaluates the ability of participating laboratories accurately to perform diagnostic services for patients. Specifically, the proficiency testing program involves (I) the transfer to a participating laboratory of a specimen (i.e., the PT Materials) the composition of which is unknown to the laboratory, (II) the analysis of the PT Materials by the laboratory and transmission of the laboratory's findings to the taxpayer and (III) the processing and evaluation of the laboratory's findings by the taxpayer. By federal law, the furnishing of the PT Materials to the laboratory must be by a government agency or a not-for-profit entity. See 42 U.S.C. Section 263a(f).

Most of the PT Materials consist of a human serum or other biologic base that is "spiked" with the analytes for which each participating laboratory must test. The taxpayer purchases the PT Materials from various manufacturers.

The manufacturer generally delivers the PT Materials by common carrier to a third party repackager retained by the taxpayer or ships the PT Materials by common carrier directly to each participating laboratory. The manufacturer invoices the taxpayer for the PT Materials at the time the manufacturer ships the PT Materials to the repackager or directly to the laboratories. The repackager breaks down the manufacturer's bulk shipment into individual packages for shipment to the laboratories, adds printed instructions supplied by the taxpayer, and then ships the materials by U.S. Mail or by common carrier to the participating laboratories.

The laboratory has no independent use for the PT materials apart from participating in the testing program. Once a participating laboratory has concluded its analysis of the PT Materials, the laboratory generally disposes of those materials. The laboratory sends a report of its analysis to the taxpayer at its headquarters in Illinois, where the taxpayer reviews the laboratory's report. The taxpayer evaluates the laboratory's analysis, and it provides its findings to the laboratory and to the accreditation organization designated by the laboratory. When the taxpayer provides the laboratory with its results for each test, the taxpayer also provides the laboratory with the mean result for that test, the standard deviation, the number of laboratories that participated in the test, the standard deviation index, the lower and upper limits of acceptability, and a plot of the relative distance of the laboratory's results from the established target as a percentage of the allowed deviation.

The taxpayer charges laboratories a single subscription amount for participating in the proficiency testing program. No separate charge is made for the PT Materials and for the testing service. On average, the cost to the taxpayer of the PT Materials was historically about 45% of the amount it invoiced customers for providing the proficiency testing service. That percentage has been decreasing recently, and this year is expected to be approximately 35%. From time to time, the taxpayer also sells PT Materials to

laboratories (without providing testing services) as replacements of samples that were lost or broken prior to or during a test. The total sales of PT Materials apart from the testing program are equal to approximately 0.6% of the taxpayer's total receipts from the proficiency testing program.

The specific proficiency testing modules in which a laboratory will enroll depends on the scope of the work done at the laboratory. Thus, a laboratory performing a wide range of analyses will participate in a larger number of modules than a laboratory doing only basic testing. Each specific proficiency testing module is priced separately.

## **DISCUSSION**

IC 6-2.5-1-1 states that a "unitary transaction" includes all items of tangible personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated. IC 6-2.5-1-2 provides that a "retail unitary transactions" means a unitary transaction that is, also, a retail transaction. A retail transaction is defined as a transfer of tangible personal property for consideration pursuant to IC 6-2.5-4-1. IC 6-2.5-2-1 imposes sales tax on retail transactions made in Indiana.

Rule 45 IAC 2.2-4-2 provides that where, in conjunction with rendering professional services, personal services or other services, the serviceperson, also, transfers tangible personal property for consideration, a retail transaction is executed unless:

1. The serviceperson is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;
2. The tangible personal property purchased is used or consumed as a necessary incident to the service;
3. The price charged for tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and
4. The serviceperson pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

Here, the proficiency testing program does not fall within the ambit of Rule 45 IAC 2.2-4-2 (i.e., the price charged for tangible personal property is not inconsequential compared with the service charge), therefore, the taxpayer cannot simply pay sales/use tax on the proficiency testing materials ("PT Materials") at the time of acquisition. The proficiency testing program does, however, fall within the ambit of IC 6-2.5-1-1, IC 6-2.5-1-2, IC 6-2.5-4-1 and IC 6-2.5-2-1, hence, the proficiency testing program is defined as a "retail unitary transaction" (provision of a service which, also, includes the transfer of tangible personal property that is invoiced on a "lump sum" basis) with the total charge for the proficiency testing program subject to sales tax to be collected by the taxpayer.

### **RULING**

The Department rules that the proficiency testing program is defined as a "retail unitary transaction" and, as such, the total charge for the proficiency testing program is subject to sales tax to be collected by the taxpayer.

### **CAVEAT**

This Ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

DEPARTMENT OF STATE REVENUE